



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

Identifying data deleted to
protect clearly unwarranted
information of personal

FILE:

Office: Nebraska Service Center

Date: DEC 19 2001

IN RE: Applicant:

APPLICATION:

Application for Waiver of the Foreign Residence Requirement
under Section 212(e) of the Immigration and Nationality Act, 8
U.S.C. 1182(e)

IN BEHALF OF APPLICANT:

Public Copy

INSTRUCTIONS:

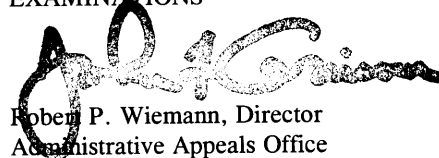
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be rejected.

The applicant is a native and citizen of Nicaragua who is subject to the two-year foreign residence requirement of section 212(e) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(e), because she participated in a program which was financed by a government agency. The applicant was admitted to the United States as a nonimmigrant exchange visitor in August 1995. The applicant married [REDACTED] ([REDACTED]), a native of Peru and naturalized United States citizen, on January 20, 1998. He is now seeking the above waiver after alleging that his departure from the United States would impose exceptional hardship on his U.S. citizen spouse.

The director reviewed the information in the record and noted the following:

(1) the applicant disappeared from the campus of Kentucky State University on May 16, 1997, violating his nonimmigrant J-1 status; and

(2) the applicant stated in his affidavit notarized on March 8, 1999, that he has lived together with [REDACTED] since July 1977. Service officers visited the applicant's address of record on December 15, 1997, and were told by [REDACTED] that the applicant had lived with her but he had vacated the residence and she did not know his whereabouts.

On January 13, 1999, the director requested the applicant to send additional documentation pursuant to 8 C.F.R. 103.2(b)(8) to complete the adjudication of the application by April 7, 1999. Failing to receive the requested documentation by the stipulated time, the director denied the application accordingly.

8 C.F.R. 103.2(b)(13) provides that if all requested initial evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under 8 C.F.R. 103.5.

Although counsel has now submitted additional documentation, there is no appeal of the director's decision in the present matter, and any further review of the record on motion is under the jurisdiction of the Director, Nebraska Service Center. The matter will be remanded to the director for treatment as a motion to reopen.

ORDER: The appeal is rejected. The matter is remanded to the director in accordance with the foregoing discussion.